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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 918

SUNSET REALTY CORP.,
Petitioner,
v.

TAX ASSESSOR, TAX COLLECTOR, BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, and COMPTROLLER OF THE STATE OF FLORIDA,
Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

FRANK A. PAVESE
Counsel for Respondent
HARRY SCHOOLEY
Tax Assessor
P. O. Box 1196
Fort Myers, Florida

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Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Petitioner prays that writs of certiorari issue to review the decrees of the District Court of Appeal, Second District of the State of Florida filed on June 10, 1964 in the above cases entitled *Sunset Realty Corp. v. Dawson McDaniel, Tax Collector of Lee County, Florida; Harry Schooley, Tax Assessor of Lee County, Florida; George S. Hunter, Herman J. Hastings, Mack H. Jones, J. Fred Huber, Julian L. Hudson, as Members of the Board of County Commissioners of Lee County, Florida; and Ray E. Green, Comptroller of the State*

of Florida (Appeal No. 4371), and *Sunset Realty Corp. v. Harry Schooley, Tax Assessor of Lee County, Florida; Dawson McDaniel, Tax Collector of Lee County, Florida; George S. Hunter, Herman J. Hastings, Mack H. Jones, J. Fred Huber, Julian L. Hudson, as Members of the Board of County Commissioners of Lee County, Florida; and Ray E. Green, Comptroller of the State of Florida* (Appeal No. 4372).* Identical questions are involved in the two cases. Both cases were decided in one opinion of the trial court. Accordingly, this single petition covering both cases is filed pursuant to Rule 23(5) of the Revised Rules of this Court.

Opinions Below

The opinion of the trial court, The Circuit Court of Lee County, Florida (R. 171-172), which relates to both cases, is unreported and is printed in Appendix A hereto, *infra*, pp. A-1–2. The opinions of the District Court of Appeal, Second District of the State of Florida (R. 179-181 and R. 251-252), printed in Appendix A hereto, *infra*, pp. A-3–5 and 6–7, are reported at 165 So. 2d 782 and 165 So. 2d 783. The Supreme Court of Florida declined to review on appeal or certiorari and rendered no opinion in these cases.

Jurisdiction

The decrees of the District Court of Appeal, Second District of the State of Florida, were entered on June 10, 1964. (R. 179 and R. 251). Rehearing of both decrees was denied on July 15, 1964. (R. 191 and R. 260).

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* All of the respondents are public officers in their official capacity. They are described herein by their official titles pursuant to Rule 48(4) of the Revised Rules of this Court.

Notices of Appeal (R. 211-212 and R. 280-281) and Petitions for Certiorari (R. 194-201 and R. 263-270) were filed in both cases in the Supreme Court of Florida. Certiorari was denied in both cases on October 30, 1964. (R. 203 and R. 272). Petitions for rehearing of the petitions for certiorari in both cases were filed on November 12, 1964 (R. 204-207 and R. 273-276) and denied on December 7, 1964. (R. 209 and R. 278). Thereafter, motions to dismiss the appeals for lack of jurisdiction were granted on December 22, 1964. (R. 222 and R. 291). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Question Presented

The Respondent directs this Honorable Court's attention to the fact that the point involved, discussed in Petitioner's Brief, on the contention of the Respondent, was not the point which was litigated in the trial court or the District Court of Appeal, and the Respondent admits that the only question at issue before the Court is as follows:

(1) Did the trial court abuse its discretion or commit an error in denying a Motion to Amend after the trial was completed, and was there sufficient evidence to support the decree or judgment?

Constitutional Provision

The constitutional provision involved is the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The second sentence of Section 1 of the Fourteenth Amendment is set out verbatim below, with the equal protection clause shown in italics.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*"

Statement of the Case

Petitioner's Statement of the Case contains an accurate recitation and summary of the pleadings, exhibits and judgment, with which Respondents find no fault except for the following comments Respondents would like to point out to this Honorable Court:

In the complaints (R. 5-12 and R. 226-232)* it was alleged by Petitioners that (1) Petitioner's property had been assessed in excess of full cash value, and that (2) Petitioner had been discriminated against in the overassessment of its property relative to property of the same class and kind similarly situated and utilized in Lee County.

The issues and pleadings were joined on these two points. The trial court decided the case on these two points and found the Petitioner failed to carry the burden of proof and that the equities . . . are with the Defendants and against the Plaintiff. The opinion of the trial court is printed in full Appendix A, infra, pp. A-1-2.

Trial court denied a motion to amend the complaint to conform to the evidence (R. 168-169 and R. 170) at the end of the trial and before judgment and stated:

"To grant said Motion would change the entire style of the case and call for a different type

* The 1961 complaint is printed in Appendix B hereto, *infra*, pp. B-1-9. It is in all material respects identical to the 1962 complaint except for the omission in the 1962 complaint of the matter contained in paragraph 5 of the 1961 complaint.

of action than the suit originally filed whether by mandamus or other proceedings;"

Trial court did consider Petitioner's claim of discrimination in that its property was over-valued relatively and comparatively to other property of the same class and kind similarly situated and utilized in said County (R. 5-12 and R. 226-232). particularly. in paragraphs 8 of the complaint in the 1961 case (R. 8) and paragraph 7 of the 1962 complaint in the 1962 case (R. 228). The 1961 Complaint is printed in full in Appendix B hereto. infra pp. B-1-9. Trial court found the equities with Respondent on the issues joined.

No Federal question was raised by the pleadings or decided by the trial court.

For the first time in the District Court of Appeal of Florida Petitioner sought to raise a Federal question. in the Assignment of Error (R. 175-178 and R. 246-250). not decided in trial court.

District Court of Appeal affirmed lower court — The Opinion of the District Court of Appeal. Appendix A infra. pp. A-3-5. explained the trial court's opinion as follows:

> "It is unnecessary to recite or summarize the evidence contained in the record. Appellant admits that none of the facts in this case. is in dispute. Our review does not disclose that the learned chancellor misapprehended the legal effect of the evidence or that he applied incorrect principles of law to the facts. There was competent. substantial evidence to support his conclusions. Therefore. the decree will be affirmed."

The Supreme Court of Florida upon reviewing the record. refused to review the decisions of the lower court.

ARGUMENT IN OPPOSITION TO GRANTING OF THE WRIT

Respondent directs this Court's attention to the fact that the issues involved. as discussed in Petitioner's brief. on the contention of the Respondent. were not the issues which were litigated in the trial court or the District Court of Appeal or the Florida Supreme Court. and the Respondent admits that the only question at issue before this Court is as follows:

1. DID THE TRIAL COURT ABUSE ITS DISCRETION OR COMMIT AN ERROR IN DENYING A MOTION TO AMEND AFTER THE TRIAL WAS COMPLETED. AND WAS THERE SUFFICIENT EVIDENCE TO SUPPORT THE DECREE OF JUDGMENT?

The Petitioner in its brief directs the Court's attention to this Court's decisions in Sioux City Bridge Company vs. Dakota County. Nebraska. 20 US 441 (1923) and Township of Hillsborough vs. Cromwell. 326 US 620 (1945). which forbids intentional unequal assessment of similar properties and entitle a taxpayer who has proved such discrimination to a reduction to the level at which comparable parcels are assessed.

The Petitioner. in quoting these two cases. is making an assumption that the state courts failed to consider the issue of discrimination. when in truth and fact Petitioner in trial court failed to maintain the burden of proof that it was assessed in excess of full cash value or that it was being discriminated against by over-evaluati. relatively and comparatively to property of the same class and kind.

A comparison of the case at bar with the Sioux City Bridge case and the Township of Hillsborough

case. discloses no similarity whatsoever nor a compelling parallel.

In the Complaints (R. 5-12 and R. 226-232) it was alleged by Petitioner that (1) Petitioner's property had been assessed in excess of full cash value: and (2) that Petitioner had been discriminated against in the overassessment of its property relative to property of the same class and kind similarly situated and utilized in Lee County.

The pleadings and issues were joined on these two points. The trial court decided the case on these two points and found the Petitioner failed to carry the burden of proof and that the equities . . . are with the Defendants and against the Plaintiff. The opinion of the trial court is printed in full. Appendix A. infra. pp. A-1-2.

After conclusion of the trial and before judgment Petitioner. realizing it had failed to carry burden of proof on the pleadings and issues joined. moved to amend Complaint to conform to the evidence. which the trial court denied. (R. 168-169 and R. 170)

Consequently. it is Respondent's initial position that since the case at bar was decided strictly on its merits and that the Petitioner failed to carry the burden of proof in the trial court or the pleadings and issued joined. that the decisions of the Florida courts in this case are not directly in conflict with the equal protection requirements as set down by this Honorable Court. and further. that no Federal question exists whatsoever.

On careful examination of the record. it clearly indicates and reveals that petitioner failed to maintain the burden of proof by any competent or substantial evidence on the pleadings and issues joined in the trial court. No Federal questions were at issue in trial court or decided by the trial court.

Petitioner makes an assumption on pp. 13 of its brief that:

> "The denial by the trial court of Petitioner's motion to amend its complaint in the 1961 case to conform to the evidence. indicates that. regardless of the allegations of intentional systematic under-assessment. the court would not consider evidence of discrimination if petitioner could not prove assessments in excess of cash value. except perhaps in a mandamus proceeding. This is made clear in the court's order (R. 170) denying the motion:"

Petitioner's argument is not valid since the motion to conform the complaint to the evidence (R. 168-169) after trial and before judgment. would in fact. have changed the whole character of the case. create new issues. and present a different kind of trial than the one just completed. This. in fact. questions the propriety of the whole tax roll. and the tax assessor's methods of carrying out the functions of his office. none of which were at issue at the time the suit was before the court for adjudication and if at that point the court had sustained the motion. Defendant-Respondent would have been precluded from presenting any evidence or refuting the new issues which were attempted to be made up at the end of the trial.

For these reasons. the trial court denied and disallowed the motion. and decided the case on the issues joined and the competent evidence presented to the court on the issues. and held that the Petitioner had carried the burden of proof to show that its property was assessed at a greater value than just value or what it was reasonably worth. (R. 170) On appeal the District Court. after examining the record. briefs and evidence. affirmed the trial court. (R. 179-181) printed in Appendix A hereto. infra. pp. A-3-5. These two decisions of the Courts. inferior in jurisdiction to this Honorable Court. were

fair and reasonable and to overturn the trial judge's decision would amount to an abuse of Rule 1.15 (b) Florida Rules of Civil Procedure*. and permit one by indirection to take advantage of incompetent evidence by starting a new lawsuit at the end of one which he had just lost.

It is pointed out to this Honorable Court that in the petition for certiorari filed by Sunset Realty Corporation. this issue is not met squarely. but the majority of the brief and arguments relate to a discussion of cases which have nothing to do with the suit which was tried or the issues as joined. Respondent would like to point out to this Honorable Court that Petitioner's entire brief and argument fail to assert that it carried the burden of proof in the trial court. Further. the word "discrimination" is used one time in paragraph 8 of the Petitioner's Complaint (R. 5-11). (Appendix B. infra. pp. B-1-9) and only as to over-valuation of its property relative to other property of the same class and kind.

Respondent would like to point out to this Honorable Court. Section 220. Volume 54 Am Jur. entitled "Record Showing as to Federal Question in State Court." from which we quote as follows:

> "United States Supreme Court has frequently stated the general rules as to what must appear in order to justify a review by it of a decision of a state court. To bring a case within the act of Congress authorizing it to review judgments of state courts. it must appear upon the face of the record that some one of the questions stated in the statute arose in the state courts. that the question was expressly or necessarily decided by the state court. that the decision of the question

*The Florida Rules of Civil Procedure, Rule 1.15 (b) concerning amendments to conform to the evidence is substantially the same as Federal Rules of Civil Procedure 15 (b).

was necessarily to the determination of the cause. These judicial facts must be exhibited in the statement which must accompany the petition for appeal. The court must see plainly that the decision was either directly made of some matter within the purview of the act relating to the court's appellate jurisdiction. or that the decision could not have been what it was without necessarily involving such matter. Consequently. the court will not review a judgment or decree of a state court if the record shows that it was or may have been rendered upon a ground which did not involve a Federal question which was sufficient to sustain it."

Numerous cases by this Court are quoted under the above and foregoing section.

From both the opinions of the trial court and the District Court of Appeals (Appendix A. infra. pp. A-1-2. 3-5 and 6-7 and from the pleadings and issues joined. it is clear that Petitioner failed to carry the burden of proof in the lower court or was there a Federal question decided upon in the lower court.

Therefore. it is submitted that. in this case. and in all similar cases. the Florida courts have provided Petitioner and parties similarly situated the equal protection of the laws.

CONCLUSION

For the foregoing reasons. this petition for a writ of certiorari should be denied.

Respectfully submitted.

FRANK A. PAVESE
Counsel for Respondent

May 15. 1965

Appendix A

IN THE
CIRCUIT COURT OF LEE COUNTY, FLORIDA
IN CHANCERY

SUNSET REALTY CORP., a Florida corporation, *Plaintiff,* vs. DAWSON McDANIEL, Tax Collector of Lee County, Florida, et al., *Defendants,* and SUNSET REALTY CORP., a Florida corporation, *Plaintiff,* vs. HARRY SCHOOLEY, Tax Assessor of Lee County, Florida, et al., *Defendants.*	CHANCERY CASE No. 14610 CHANCERY CASE No. 15340

FINAL DECREE

The plaintiff filed suit against the Tax Collector of Lee County, Florida, and others, attacking the validity of the Lee County, Florida ad valorem taxes levied against plaintiff's land for the year 1961, being Chancery Case No. 14610; and thereafter plaintiff filed a like suit against Harry Schooley, Tax Assessor of Lee County, Florida, et al., with respect to the 1962 ad valorem taxes levied against its land, being Chancery Case No. 15340. Upon stipulation of all of the parties to said Chancery Case No. 15340 that the issues of both cases were essentially the same, it was agreed that Chancery Case No. 15340 should be bound by the ruling of the Court in Chancery Case No. 14610, which was understood to mean the final determination of the cause.

this stipulation upon the basis of essentially the same facts in the previous trial of Chancery Case No. 14610 before this Court and any actual trial of Chancery Case No. 15340 would be a duplication of the previous case. Chancery Case No. 14610 was set down before me for trial and I personally heard the testimony adduced by the parties and I examined and reviewed the documentary evidence and exhibits admitted in evidence and, after consideration thereof, I find: (a) That for the year 1961 plaintiff's lands were not assessed in excess of the full cash value thereof; and (b) That the equities in Chancery Case No. 14610 are with the defendants and against the plaintiff; (c) That as per stipulation between all of the parties to said cause that for the year 1962 the plaintiff's lands were not assessed in excess of the full cash value thereof; and (d) That the equities in said Chancery Case No. 15340 are with the defendants and against the plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Complaint in each such case is hereby dismissed, with prejudice and at the cost of the plaintiff.

DONE AND ORDERED this 21st day of June, 1963.

ARCHIE M. ODOM
Circuit Judge

STATE OF FLORIDA, COUNTY OF LEE
FILED FOR RECORD

This 21 day of June 1963 Record in OR Book 197 Page 74 and Record verified D. T. Farabee, Clerk Circuit Court.

BY ENID EARLE
Deputy Clerk

[SEAL]

Appendix A

IN THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

January Term, A. D. 1964

SUNSET REALTY CORP., a Florida corporation, *Appellant,* v. DAWSON McDANIEL, Tax Collector of Lee County, Florida, HARRY SCHOOLEY, Tax Assessor of Lee County, Florida; GEORGE S. HUNTER, HERMAN J. HASTINGS, MACK H. JONES, J. FRED HUBER, JULIAN L. HUDSON, as Members of the Board of County Commissioners of Lee County, Florida; and RAY E. GREEN, Comptroller of the State of Florida, *Appellees.*	CASE NO. 4371

Opinion filed June 10, 1964.

Appeal from the Circuit Court for Lee County; Archie M. Odom, Judge.

Earl Drayton Farr, Jr., of Farr, Farr and Haymans, Punta Gorda, for Appellant.

Frank A. Pavese of Pavese & Waldorf and R. W. Shaughnessy, Fort Myers, for Appellees.

ELMORE, FRANK H., ASSOCIATE JUDGE.

The plaintiff, appellant here, by its complaint, sought injunctive relief to restrain the defendants,

appellees here, from collecting taxes assessed against certain of its lands in Lee County for the year of 1961 and to set aside so much of the tax assessments for that year as exceeded alleged full cash value.

After the evidence had been adduced, and before adjudication, plaintiff moved to amend its complaint to conform to the evidence. The court, after argument, denied the motion* and entered a final decree dismissing the complaint upon findings that plaintiff's lands were not assessed in excess of the full cash value and that the equities were with the defendants and against the plaintiff.

The Court, in effect, found that plaintiff had failed to sustain the burden of proof laid upon it of establishing that the property was assessed in excess of full cash value; thus it was not entitled to injunctive relief because of alleged unlawful discrimination.

The decree of the trial court is generally presumed to be correct on appeal. This court is not authorized to interfere with the judgment of the trial court unless there is no substantial evidence to support the judgment.

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* The Court gave these reasons for denying the motion:

"1. To grant said Motion would change the entire style of the case and call for a different type of action than the suit originally filed whether by mandamus or other proceedings;

"2. To grant said Motion would test the Tax Assessor's authority to assess developing subdivisions at a developer's discount on acreage basis, thereby placing the entire tax rolls of Lee County, Florida . . . in question . . .

"3. Testimony and exhibits introduced at the trial of the cause of action failed to show that plaintiff's lands were assessed in excess of one hundred per cent of full cash value."

Appendix A

It is unnecessary to recite or summarize the evidence contained in the record. Appellant admits that none of the facts in this case is in dispute. Our review does not disclose that the learned chancellor misapprehended the legal effect of the evidence or that he applied incorrect principles of law to the facts. There was competent, substantial evidence to support his conclusions. Therefore, the decree will be affirmed.

Affirmed.

SHANNON, A. C. J., and WHITE J., CONCUR.

Appendix A

IN THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT
January Term, A. D. 1964

SUNSET REALTY CORP., a Florida corporation, *Appellant,* v. HARRY SCHOOLEY, Tax Assessor of Lee County, Florida; DAWSON MCDANIEL, Tax Collector of Lee County, Florida; GEORGE S. HUNTER, HERMAN J. HASTINGS, MACK H. JONES, J. FRED HUBER, JULIAN L. HUDSON, as Members of the Board of County Commissioners of Lee County, Florida; and RAY E. GREEN, Comptroller of the State of Florida, *Appellees.*	CASE NO. 4372

Opinion filed June 10, 1964.

Appeal from the Circuit Court for Lee County; Archie M. Odom, Judge.

Earl Drayton Farr, Jr., of Farr, Farr and Haymans, Punta Gorda, for Appellant.

Frank A. Pavese of Pavese & Waldorf and R. W. Shaughnessy, Fort Myers, for Appellees.

PER CURIAM.

This case involves the identical parties and issues of those embraced by Case No. 4371, decided this date.

The only distinction is that that case concerns assessments and taxes for the year of 1961 and this case for the year of 1962.

Attorneys of record for the parties have stipulated that this case shall be bound by the ruling in Case No. 4371, which was adopted by the trial court. Therefore, upon that authority, the decree in this case is affirmed.

Affirmed.

SHANNON, A.C.J., and WHITE, J., and ELMORE, FRANK H., ASSOCIATE JUDGE, CONCUR.

Appendix B

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA.

IN CHANCERY.

SUNSET REALTY CORP., a Florida corporation, *Plaintiff* *vs* DAWSON MCDANIEL, Tax Collector of Lee County, Florida; HARRY SCHOOLEY, Tax Assessor of Lee County, Florida; GEORGE S. HUNTER, HERMAN J. HASTINGS, MACK H. JONES, J. FRED HUBER, JULIAN L. HUDSON, as Members of the Board of County Commissioners of Lee County, Florida; and RAY E. GREEN, Comptroller of the State of Florida, *Defendants*	No. 14610

COMPLAINT

Comes now the Plaintiff, SUNSET REALTY CORP., a Florida corporation, by and through its undersigned attorneys, and files this its Complaint against Dawson McDaniel, Tax Collector of Lee County, Florida; HARRY SCHOOLEY, Tax Assessor of Lee County, Florida; GEORGE S. HUNTER, HERMAN J. HASTINGS, MACK H.

Appendix B

JONES, J. FRED HUBER and JULIAN L. HUDSON, as Members of the Board of County Commissioners of Lee County, Florida, and RAY E. GREEN, Comptroller of the State of Florida, Defendants herein, and alleges:

1. The plaintiff, SUNSET REALTY CORP., is a Florida corporation with its principal place of business at Boca Grande, Lee County, Florida.

2. DAWSON MCDANIEL is the Tax Collector for Lee County, Florida, and HARRY SCHOOLEY is TAX ASSESSOR of Lee County, Florida; that GEORGE S. HUNTER, HERMAN J. HASTINGS, MACK H. JONES, J. FRED HUBER and JULIAN L. HUDSON are members of the Board of County Commissioners of Lee County, Florida and RAY E. GREEN, Defendant, is the Comptroller of the State of Florida.

3. Plaintiff, SUNSET REALTY CORP., is the fee simple owner of property situate in Lee County, Florida, more fully described in Exhibit "A" attached hereto and made a part hereof as if fully set out herein. The fair value of the land contained in Schedule A is $538,800.00 as shown on said schedule.

4. A preliminary tax assessment roll was prepared by HARRY SCHOOLEY, Tax Assessor, covering Lee County, Florida and specifically the property of Plaintiff set out in Exhibit "A". HARRY SCHOOLEY assessed the property of Plaintiff as set out in Exhibit "A" for tax purposes, at a total sum of $908,360.00 as shown in said Exhibit.

5. Chapter 193.25,1961, requires that the tax roll shall be complete prior to the first Monday in July, and that said Assessor shall meet with the Board of County Commissioners for the purpose of hearing complaints and filing of said roll on that date, but said HARRY SCHOOLEY, Defendant, failed to file the Lee County tax roll on the first Monday in July, to-wit, July 3, 1961, and the Board of Equalization failed to meet for the purpose of hearing complaints and receiving testimony thereon on that date, nor did they meet on said July 3, 1961, for the purpose of extending to the Assessor further time for the preparation of the tax roll, nor did he request further time for the preparation of the roll, nor did they meet on July 3, 1961 for the purpose of deferring hearings with respect thereto, as will be seen by the County Clerk's Certificate, Plaintiff's Exhibit "B", attached hereto and made a part hereof as if fully set out herein.

6. The Defendant Board of Commissioners, GEORGE S. HUNTER, HERMAN J. HASTINGS, MACK H. JONES, J. FRED HUBER, and JULIAN L. HUDSON, did meet on July 5, 1961, and allegedly sat as a Board of Equalization at which time the Plaintiff, SUNSET REALTY CORP., filed its objection to the assessments as shown on Schedule "A" hereof and to which, at a later hearing, said County Commissioners granted a token reduction, but did then and there fail to lawfully equalize the tax assessment of said Plaintiff.

7. Said Defendant Tax Assessor, is required by Article IX, Section 1, of the Florida Constitution, to

make a just valuation of all property in Lee County, and that said Defendant Tax Assessor, contrary to his duties and obligations under the law as aforesaid, assessed and determined the value of the above described property for ad valorem tax purposes unjustly and unfairly in that the said property was arbitrarily, grossly, and unlawfully overvalued because said assessment was based upon the speculative value of the property rather than based upon the just valuation thereof in accordance with the requirements of Article IX, Section 1, of the Florida Constitution.

8. Said Harry Schooley, Tax Assessor, contrary to his duty and obligation under the law as aforesaid, assessed, fixed and determined the value of the above-described property for ad valorem tax purposes, arbitrarily, unjustly, unfairly, and with unconscionable discrimination, in that the said property was grossly and unlawfully over-valued relatively and comparatively to property of the same class and kind similarly situated and utilized in said County.

9. Plaintiff's property is assessed by said Tax Assessor for the year 1961 at a value many times higher in proportion to its actual full cash value than the valuation placed by him on property generally in the County of the same class. The said assessed valuation was excessively high and grossly out of proportion to the assessed valuation fixed on property generally in said County.

10. The aforesaid appraisal of Harry Schooley, in the amount of $908,360.00 has been represented to be

the full cash value of the lands as of January 1, 1961. Said appraisal of Plaintiff's land is approximately ten (10) times the value of said lands as assessed against real estate by the Tax Assessor for Lee County, Florida, for the years 1959 and 1960. Said appraisal is grossly and unlawfully excessive as to Plaintiff's land as certain of said lands are mangrove, swamps, ponds and overflow land and that the assessment as made upon these lands is invalid for the reason that it is so grossly excessive and inequitable as to be confiscatory in its nature to amount to a fraud upon the Plaintiff, being in violation of Article IX, Section 1, of the Florida Constitution requiring a just valuation of all property.

11. Plaintiff would show that the Lee County Board of County Commissioners adopted the roll of tax assessor HARRY SCHOOLEY on the 2nd day of October, 1961.

12. That unless Defendants are restrained as hereinafter prayed, said illegal taxes will be declared and will constitute a lien against Plaintiff's property, causing Plaintiff irreparable damage.

13. Your Plaintiff files with this Complaint in the Registry of the Court, the sum of $16,396.76, which is the proper amount due, based upon the millage as set by the County Commissioners on said property upon the valuation of said lands as set forth by the Plaintiff herein.

WHEREFORE, Plaintiff prays:

1. That this Honorable Court take jurisdiction of the subject matter of this suit;

2. That this Court shall declare void and invalid the 1961 assessment of the Tax Assessor of Lee County in the amount of $908,360.00, upon Plaintiff's property;

3. That in the alternative, this Honorable Court shall set aside that part of the aforementioned assessment as shall be invalid or as shall appear to be contr y to law;

4. That this Court shall forthwith enjoin the Tax Collector of Lee County, Florida, from proceeding with the collection of the aforesaid tax assessed by the County Tax Assessor of Lee County, Florida, and shall further enjoin the said Tax Collector from issuing tax certificates or claiming or enforcing a lien upon the subject property on account of unpaid taxes for such assessment made by the Tax Assessor of Lee County, Florida;

5. That this Court shall decree any other and further relief which it deems equitable and proper.

Dated this 30th day of October A.D., 1961.

FARR AND FARR,
Attorneys for Plaintiff,
SUNSET REALTY CORP.,

By: EARL DRAYTON FARR JR.
Of Counsel
P. O. Box 635
Punta Gorda, Florida

Appendix B

STATE OF NEW YORK }
COUNTY OF NEW YORK }

Before me, the undersigned authority, personally appeared HENRY L. SCHWARTZ, known to me to be an officer of SUNSET REALTY CORP., Plaintiff in the above cause, who says that he has read the foregoing Complaint, and the facts and statements contained therein are true and correct.

HENRY L. SCHWARTZ
Title: *President*

Sworn to and subscribed before
me this 25th day of October,
A.D. 1961

S. HOYT SAYER
Notary Public—State of New York

My Commission Expires: 3/30/62

S. HOYT SAYER
Notary Public, State of New York
No. 60-8776900
Qualified in Westchester County
Term Expires March 30, 1962

(AFFIX NOTARY SEAL)

Appendix B

EXHIBIT "A"

SCHEDULE A

(Description)	(Assessed Value)	(Full cash Value as appraised by Complainant)
Sec. 11, Township 43 South, Range 20 East, All Govt. Lot 2 and All Govt. Lot 4 N. of 20th St., Lee County, Florida	$353,790.00	$190,000.00
Sect. 2, Township 43 South, Range 20 East, Govt. Lots 1 to 5, inclusive	$480,020.00	$315,000.00
Lots 21 to 24, inclusive, and 28 to 31, inclusive, Block 43A, Boca Grande, Lee County, Florida	$ 36,900.00	$ 20,800.00
Lots 21 to 25, inclusive, Block 45, Boca Grande, Lee County, Florida		$ 13,000.00
All of Block 45, Boca Grande, Lee County, Florida	$ 37,650.00	
	$908,360.00	$538,800.00

Appendix B

EXHIBIT "B"

Certificate of Clerk

I, D. T. Farabee, Clerk of the Circuit Court in and for Lee County, Florida, do hereby certify that the Lee County Board of County Commissioners did not convene as the Board of Tax Equilization on July 3, 1961 which was the first Monday in July, 1961.

D. T. Farabee
D. T. Farabee
County Clerk of Lee County

Appendix B

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA.

IN CHANCERY

SUNSET REALTY CORP., a Florida Corporation, *Plaintiff*, *vs.* DAWSON McDANIEL, Tax Assessor of Lee County, Florida, et al., *Defendants.*	Case No. 14610

ANSWER OF DEFENDANT HARRY SCHOOLEY

Comes now Defendant Harry Schooley, Tax Assessor of Lee County, Florida, and answering the Bill of Complaint filed in the above cause says:

1. That said Defendant is without knowledge of Paragraph 1 of the Bill of Complaint and therefore denies all the allegations therein.

2. That said Defendant admits the allegations of Paragraph 2 of said Bill of Complaint.

Appendix B

. That said Defendant admits the allegations ıragraph 3 of said Bill of Complaint. with the tion of the last sentence therein. which Dent denies.

That said Defendant admits the allegations ragraph 4 of said Bill of Complaint.

That said Defendant admits the allegations ragraph 5 of said Complaint. but would show he tax roll was completed and said Defendant eady. willing and able to file said roll and with the Lee County Commissioners on the Monday in July. to wit. July 3. 1961.

That said Defendant admits that part of legations of Paragraph 6 of said Bill of Comthrough the first five lines and part of line rough Schedule "A". but denies the further ions of said Paragraph 6.

That said Defendant denies all the allegaset out in Paragraph 7 of said Bill of Com-

That said Defendant denies all the allega- of Paragraph 8 of said Bill of Complaint.

9. That said Defendant denies all the allegations of Paragraph 9 of said Bill of Complaint.

10. That said Defendant admits the allegation of the first sentence of Paragraph 10 of said Bill of Complaint. but denies all the other allegations of Paragraph 10 of said Bill of Complaint.

11. That Defendant admits the allegation of Paragraph 11 of said Bill of Complaint.

12. That Defendant is without knowledge of the allegations of Paragraph 12 of said Bill of Complaint and therefore denies all the allegations set out in said Paragraph.

13. That Defendant is without knowledge of the allegations of Paragraph 13 of said Bill of Complaint and therefore denies all the allegations set out in said Paragraph.

DATED this 7th day of February. 1962.

R. W. SHAUGHNESSY
Attorney for Defendant
Harry Schooley. Tax Assessor
of Lee County. Florida

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer has been sent to Farr and Farr. Post Office Box 635. Punta Gorda. Florida. Attorneys for Sunset Realty Corporation: to Sheppard & Woolslair. Post Office Box 509. Fort Myers. Florida. Attorneys for Dawson McDaniel. Tax Collector of Lee County. Florida. and to W. H. Carmine. Jr.. Post Office Box 228. Fort Myers. Florida. Attorney for George Hunter. Herman J. Hastings. Mack H. Jones. J. Fred Huber and Julian L. Hudson. as members of the Board of County Commissioners of Lee County. Florida. and for Ray E. Green. Comptroller of the State of Florida. by United States mail. this 7th day of February. 1962.

R. W. SHAUGHNESSY